

**FCC MAIL SECTION**

Before the  
**DEC 1** Federal Communications Commission  
 Washington, D.C. 20554

**DISPATCHED BY**  
**MM Docket No. 94-137**

In the Matter of

Amendment of Section 73.202(b) RM-8532  
 Table of Allotments,  
 FM Broadcast Stations.  
 (Romney, West Virginia)

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: November 21, 1994; Released: November 29, 1994**

**Comment Date: January 19, 1995**

**Reply Comment Date: February 3, 1995**

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by The Virginia Schools for the Deaf and the Blind ("petitioner"), licensee of Station WJGF(FM), Channel 201A, Romney, West Virginia, proposing the substitution of Channel 281A for Channel 201A at Romney. Petitioner also requests that Channel 281A be reserved for noncommercial educational use, and that Station WJGF(FM)'s license be modified accordingly. Petitioner states its intention to apply for the channel, if allotted.<sup>1</sup>

2. In support of its proposal, petitioner states that the substitution of Channel 281A for Channel 201A at Romney will eliminate interference with Station WJAC-TV, Channel 6, Johnstown, Pennsylvania. Petitioner also claims that there are no channels available on the noncommercial educational band.

3. Generally, noncommercial educational stations operate within the reserved portion of the FM band (Channels 201-220). However, exceptions have been made where channels in the noncommercial educational band are not available because of foreign allotments (Canadian or Mexican), or potential interference to operation on VHF Television Channel 6. Here, potential interference to Station WJAC-TV, Channel 6, Johnstown, Pennsylvania, appears to justify the reservation of a channel in the nonreserved band (Channels 221-300) for noncommercial educational use. An engineering analysis has confirmed that there are no Class A channels available in the noncommercial educational band. Therefore, the allotment and reservation of a

commercial channel appears to be the only way to provide a full Class A noncommercial educational channel to Romney.

4. We believe the public interest would be served by proposing the substitution of Channel \*281A for Channel 201A at Romney, West Virginia, and its reservation for noncommercial educational use. See *Rochester, Minnesota and Clear Lake and Osage, Iowa*, 7 FCC Rcd 6505 (1992). An engineering analysis has determined that Channel \*281A can be allotted to Romney in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.7 kilometers (1.7 miles) north at petitioner's requested site.<sup>2</sup> We shall also propose to modify the license of Station WJGF(FM) to specify operation on Channel \*281A in lieu of Channel \*201A at Romney in accordance with the Commission's Rules. In the event there are other expressions of interest for a Class A channel in the community, petitioner has indicated that there is another equivalent channel available.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Romney, West Virginia	261A	261A, *281A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **January 19, 1995**, and reply comments on or before **February 3, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Max D. Carpenter, Superintendent  
 The West Virginia Schools for the Deaf  
 and the Blind  
 301 East Main Street  
 Romney, West Virginia 26757  
 (Petitioner)

<sup>1</sup> Although the petitioner's request was signed, it failed to include an affidavit verifying that the statements contained in the petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice

that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, 3919 n.41 (1990). The petitioner is requested to rectify this omission in its comments.

<sup>2</sup> The coordinates for Channel \*281A at Romney are North Latitude 39-22-00 and West Longitude 78-44-50.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Acting Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.